

### **REMARKS**

This Amendment is responsive to the non-final Office Action of September 25, 2008. Reconsideration and allowance of claims 1, 7, 8, 10, 11, and 17-25 are requested.

### **The Office Action**

Claims 1, 7, 8, 10, 11, and 17-25 are pending in the application.

Claims 1, 7, 8, 10, 11, 17-19, 21, and 22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Teller (US 2002/0019586, also known as US 7,261,690), in view of Knispel (US 4,883,067), further in view of Shafer (US 5,386,247).

Claim 20 stands rejected under 35 U.S.C. § 103 as being unpatentable over Teller in view of Knispel, further in view of Shafer, further yet in view of Sylliassen (US 2002/0134474).

Claim 23 stands rejected under 35 U.S.C. § 103 as being unpatentable over Teller in view of Shafer, further in view of Sylliassen. It is noted that claim 23 stands rejected under different references than its parent claim 1. Particularly, Knispel has been removed from the combination in favor in Sylliassen.

### **The References of Record**

**Teller** is directed to a system for monitoring the health, wellness, and fitness of a patient or individual. It remotely collects data relating to an individual's physiological state, lifestyle, and various contextual parameters. The detected physiological parameters include a wide variety of parameters including the near two dozen listed in Table 1. In passing, Teller mentions that based on the sensed parameters, the system could also adjust a home thermostat or turn off a lighting system, television, or stereo if the wearer is determined to have fallen asleep.

**Knispel** is directed to a method and apparatus for psychologically inducing and controlling a wide variety of psychological and physiological states of a patient. More specifically, biofeedback is generated and used to control music supplied to a patient to control his/her psychological and physiological states.

**Shafer** discloses turning off a television if the viewer falls asleep or otherwise loses interest in watching. Rather than turning the TV off immediately, Shafer turns the sound down gradually over a timed period until it is turned off.

**Sylliassen** turns an electronic device off in response to sensing a lack of motion or a lack of heat. Like Shafer, Sylliassen gives a warning and if the viewer does not respond within the timed period, the electronic device is shut off.

**The Claims Distinguish Patentably  
Over the References of Record**

**Claim 1** calls for turning the electronic device to a reduced sound or image mode in response to detecting one physiological parameter, particularly theta waves, and for switching the electronic device or to an off or hibernation mode in response to detecting a second physiological response, particularly delta waves or a REM state. None of the references cited by the Examiner, nor the combination of the references which the Examiner created teaches or fairly suggest shutting the electronic device down in two stages, *both of which are controlled in response to detected physiological conditions*.

Teller merely turns the TV off in response to determining that the viewer is asleep. There are not two controlled modes.

Knispel provides an interesting discussion of brainwaves and their meanings, but does not disclose or fairly suggest turning off an electronic device based on brainwaves.

Shafer does not cure this shortcoming of Teller and Knispel. Shafer again shuts off the electronic device in response to detecting a single condition or parameter. Specifically, when Shafer determines that the viewer is asleep or has otherwise lost interest in watching, that parameter triggers the turning off of the television. Rather than just turning off immediately and instantaneously, Shafer gradually lowers the sound volume or alters the onscreen display for a preset period, e.g., a minute or two. At the end of this timed gradual turn down, Shafer turns the TV off. Shafer does not sense a second parameter before making the decision whether or not to turn the TV from the reduced sound mode to the off mode.

First, it is submitted that the Examiner's combination of references is a hindsight reconstruction. That is, that the present application and claims have been

used as a road map for assembling the various sections of three applied references rather than looking to the fair teachings of the references themselves.

Second, even if one were to combine Teller, Knispel, and Shafer as the Examiner proposes, the combination would still not meet claim 1 because the Examiner's combination of references would not teach or fairly suggest reducing the sound or image quality in response to a first detected physiological parameter, particularly theta waves, and turning the TV off or to a hibernation mode in response to detecting a second physiological parameter, particularly delta waves or a REM state. Rather, Shafer and the rest of the combination would, in response to detecting a single or combination of physiological parameters, make the decision to turn the electronic device off. Rather than just turning the device off as in Teller, Shafer would turn the device off over time. Specifically, the single trigger would initiate the reducing sound mode which would culminate in turning the TV off based on time, not based on a second sensed physiological parameter.

Accordingly, it is submitted that **claim 1 and claims 7, and 17 dependent therefrom** distinguish patentably and unobviously over Teller as modified by Knispel, as further modified by Shafer.

Dependent **claim 23**, like parent claim 1, calls for reducing the sound or picture mode in response to detecting theta waves and switching the electronic device to either off or a hibernation mode in response to detecting delta waves or a REM state. None of Teller, Shafer, nor Sylliassen disclose or fairly suggest the use of theta waves, delta waves, or a REM state as a controlling physiological parameter.

Accordingly, it is submitted that dependent **claim 23** distinguishes patentably and unobviously over the references of record.

**Claim 8** calls for a control unit which makes two determinations: (1) whether the user is probably asleep and (2) whether the user is asleep. Each of these two determinations triggers a different controlled event. In response to the first condition, the control unit reduces a volume or sound mode of the electronic device. In response the second condition, the control unit switches the electronic device to a reduced power consumption mode. Thus, claim 8 calls for the control unit to make determinations based at least two states of the user and to respond to each of those states differently. Teller merely determines if the user is asleep and turns the TV off.

Knispel relates to using brainwaves and biofeedback to control mood, and does not cure this shortcoming of Teller. Shafer, like Teller, makes a single determination, i.e., that the user has fallen asleep or lost interest. In response to this single determination, Shafer turns the television off. However, rather than turning it off directly, Shafer turns it off over a minute or two. That is, Shafer turns the TV off by reducing the sound gradually over a minute or two until the sound and TV are off. In Shafer, turning the TV off is in response to the time period over which the sound is turned down timing out. It is not in response to making a determination about a state of the user.

Accordingly, it is submitted that **claim 8 and claims 10, 11, 18, 22 and 24 dependent therefrom** distinguish patentably and unobviously over the references of record.

Dependent **claim 18** calls for a brainwave detector which measures brainwaves of the user and generates the detection signal based on the detected brainwaves. Thus, in claim 18, the electronic device is switched to the reduced volume or image mode in response to detecting a brainwave parameter of a first brainwave condition of the user and the television is switched off in response to a second brainwave state. Rather than switching the electronic device to a reduced sound or picture mode in reduced to one brainwave state and switching the TV to a reduced power consumption mode in response to a second brainwave state, Shafer starts reducing the sound in response to determining that the user is asleep or has lost interest and turns the TV off in response to the sound reducing mode timing out. Shafer does not detect a second brainwave state of the user before it decides whether to turn the TV off. Teller does not cure this shortcoming of Shafer.

Accordingly, it is submitted that **claim 18** distinguishes yet more forcefully over the references of record.

Dependent **claim 24** further calls for the control unit to reduce the sound or image in response to theta waves being detected and the switch to the reduced power consumption mode in response to the delta waves or the REM sleep state being detected. Teller merely shuts the TV off. Shafer, like Teller, shuts the TV off in response to one detected condition. In Shafer, switching off involves lowering the sound gradually over a minute or two. However, it is submitted that because

Shafer does not shut the TV off in response to a second detected condition, Shafer's idea of turning the TV off by going through a gradually reducing sound mode is merely a different way of turning the TV off. It does not suggest two actions, each triggered by a different brainwave condition.

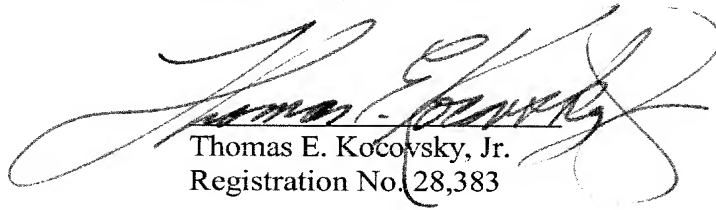
**Claim 19** calls for making two determinations: (1) whether the user is probably asleep and (2) whether the user is in a deep or REM sleep. Each of these two determined sleep states triggers a different response. The first triggers reducing the sound or image. The second triggers switching to a reduced power consumption mode. None of the references of record teach or fairly suggest triggering a reduced volume or image mode in response to determining that the user is probably asleep and triggering a reduced power consumption mode in response to determining that the user is asleep. Shafer, like Teller, shuts the TV off in response to a single detected condition. The shutting off of Shafer is a minute or two long operation in which the volume diminishes gradually. In Shafer, there is no suggestion of reducing the volume in response to one detected brainwave or other physiological state and turning the TV to the reduced power consumption mode in response to detecting a different brainwave state or physiological condition.

Accordingly, it is submitted that **claim 19 and claims 20, 21 and 25 dependent therefrom** distinguish patentably and unobviously over the references of record.

**CONCLUSION**

For the reasons set forth above, it is submitted that claims 1, 7, 8, 10, 11, and 17-25 are now in condition for allowance. An early allowance of all claims is requested.

Respectfully submitted,  
Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Thomas E. Kocovsky, Jr.', is written over the typed name and registration number.

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